satisfy him in all probability amounts to an equitable assignment. Nor do I think Mr. Hilborne's argument based on the fact that the plaintiff had no property in his hands to be a trustee of can avail him. As a general authority on the point I would refer to a passage in *Lewin* on Trusts (15th Edn.) p. 89 :—

"If a person agree for valuable consideration to settle a specific estate, he thereby becomes a trustee of it for the intended objects, and all the consequences of a trust will follow; so, if he covenant to charge all lands that he may possess at a particular time, or at any time, he will be a trustee of such lands to the extent of the change."

Again I think the facts in *In re Haynes Will Trusts*[5], referred to above, are adverse to Mr. Hilborne's argument. I have also given careful consideration to the submissions against forfeiture based on *Gentle v. Faulkner*[7] in which it was held that there had been no breach of a covenant against assignment in a lease by a lessee who had made an equitable assignment but not a legal one. I would make two observations in this connection. Firstly, neither in *Gillott's case*[4] nor in *Haynes' case*[5] does any suggestion appear to have been made that *Gentle v. Faulkner*[7] was an authority that could be applied in those cases. Secondly, if one accepts the view that it was the testator's intention to endeavour to prevent assignment before the period of distribution it seems to me to follow it must have been equitable assignments the testator had in mind when the forfeiture clause was included since the beneficiaries would be in no position to make legal assignments prior to the period of distribution.

Mr. Hoalim submitted the argument that vendors in transactions of this nature became trustees for the purchasers only in cases where they were in a position to convey the land, on the principle that equity looks on that as done which ought to be, but once again I think the construction of the forfeiture clause is the dominant consideration, and if it is directed to prevent equitable assignments before the date of distribution it is hard to see how the question of possession affects the matter, and I doubt if the maxim has any application.

I do not consider, then, that any of the arguments put forward on behalf of the assignees, can succeed in the face of Mr. Munro's submissions that each of these transactions amounted to an equitable assignment, except perhaps in the case of that at page 37, the nature of which might possibly be more fully argued later if necessary, and I hold that the transactions at pages 30, 33, 35 and 39 of the Agreed Bundle created equitable assignments of the property to which they relate. I further hold that these four transactions, for the reasons I have given, have attracted the operation of the forfeiture clause, and the Court directs that in the events that have happened Lim Chianh Fook, the plaintiff, has forfeited his share in the estate under the testator's Will.

It was agreed that argument as to costs should be reserved.

In conclusion I would like to express the Court's particular thanks to Mr. N. A. Mallal, who appeared on behalf of the executrix of the Will, for so clearly setting the stage, if I may use the phrase, as to the issues for determination.

Order accordingly.

Solicitors : *Philip Hoalim & Co.; Mallal & Namazie; Allen & Gledhill; Oehlers & Choa; Hilborne & Murphy; Braddell Bros.*

LEE SWEE PENG (f) v. KOON KUM KENG

[A.C.J. (Bellamy J.) October 13, 1954]

[K. L. — Civil Appeal No. 22 of 1954]

Married Women and Children (Maintenance) Ordinance, 1950, s. 6(1) — Variation of maintenance order — Grounds for.

In this case the respondent, who was on June 11, 1954, ordered to pay to the appellant $50 per month for the maintenance of his 3½ year old child, applied to the Magistrate's Court to rescind or vary the same order. The respondent's only ground for the application was that he was unable to pay $50 per month.

In his ground of decision the learned Magistrate, in varying the order from $50 to $30 per month said, "The respondent in his examination before me states *inter alia* that he is a dispenser drawing a salary of $262 p.m. He is a married man and has to support an old mother of 61 years. His monthly expenditure amounts to $258.20. It appears that in order to meet the maintenance of the child, respondent must exercise strict economy in his expenditure. For this reason, I am satisfied that the respondent has shewn good cause for the variation of the order."

Held: before a maintenance order under the Married Women and Children (Maintenance) Ordinance, 1950, can be rescinded or varied by a Court there must be evidence before the Court either of a change in the circumstances of the person applying for rescission or variation of the order, or of some other good cause.

CIVIL APPEAL.

P. G. Lim for the appellant.

K. L. Devaser for the respondent.

Cur. Adv. Vult.

Bellamy J. : —This appeal must be allowed, and the order of the Magistrate dated 1st August, 1954 is set aside.

Before a maintenance order under the Married Women and Children (Maintenance) Ordinance, 1950 can be rescinded or varied by a Court there must be evidence before the Court either of a change in the

circumstances of the person applying for rescission or variation of the order, or of some other good cause.

There was here no evidence whatsoever before the Magistrate of a change in the circumstances of the applicant, the husband. The Magistrate varied the order because the applicant, to quote the Magistrate's words, "must exercise strict economy in his expenditure." This was entirely irrelevant and could not amount to "good cause". As this was the only ground upon which the Magistrate varied the order, the order as varied cannot stand.

Appeal allowed.

Solicitors: *Braddell & Ramani; K. L. Devaser.*

MANLIO VASTA v. INTER-OCEAN SALVAGE & TOWAGE LTD.

[O. C. J. (Tan Ah Tah J.) December 4, 1954]

[Singapore — In Forma Pauperis Suit No. 935 of 1954]

Master and Servant — Failure to provide safe and proper system of work — Defence of common employment.

In this case the plaintiff claimed damages for general injuries and loss of earning power as a result of injuries caused to him in diving operations performed for the defendant company. On the facts the learned Judge found that the defendant company had failed to provide a safe and proper system of work in that they did not provide a second diver on at the scene of operations on the day in question. He also found that they were negligent in that through their agent or agents they were responsible for the unreasonable delay in bringing the plaintiff to the decompression chamber at Loyang after the accident. The defendant company *inter alia* relied on three defences: (1) the plaintiff knowing that diving was a risky occupation voluntarily encumbered such risk i.e. *volenti non fit injuria;* (2) the plaintiff was guilty of contributory negligence; (3) the doctrine of common employment.

Held: (1) the plaintiff did not voluntarily undertake or contract to accept the risk upon himself of diving without a second diver and therefore the defence of *volenti non fit injuria* was not available to the defendant company; (2) on the facts the plaintiff was not guilty of contributory negligence; (3) where the employer, as in this case, had not provided a safe and proper system of work for his employee the employer cannot rely on the doctrine of common employment as a defence.

Case referred to:—

(1) *Winter v. Cardiff Rural District Council* (1950) 1 All E.R. 819.

CLAIM for damages.

K. E. Hilborne for the plaintiff.

H. G. Hanbury Sparrow for the defendants.

Cur. Adv. Vult.

Tan Ah Tah J.: — In this case the plaintiff was employed by the defendant company as a diver to work on their salvage and wreck raising operations. On the 12th August 1953 in the course of his work the plaintiff was diving during certain salvage operations off the coast of Singapore at an approximate depth of 120 feet. During the last of a series of dives the plaintiff felt giddy and gave the signal to the linesman on the company's boat to be brought up to the surface. He was thereupon hauled up in one movement in a short space of time instead of by stages over a period of time to allow for decompression in the body. As a result of the events that ensued the plaintiff sustained a form of compressed air illness generally referred to by divers and persons engaged in salvage operations as the "bends." There was a delay in transporting the plaintiff to Loyang for treatment in a decompression chamber which was available there and in consequence of this delay the plaintiff sustained grave personal injuries some of which have been stated by medical witnesses to be of a permanent character.

Among other allegations, it is alleged on behalf of the plaintiff that the defendant company failed to provide and maintain a safe and proper system of work, one of the requirements in a safe and proper system of work being the presence of a second or assistant diver to assist the person actually diving in the event of an emergency arising. On this point Mr. McCracken, Port Diving Officer, Singapore gave evidence as an expert witness and was most emphatic in his assertion that the presence of a second or assistant diver was essential during diving operations. The following is a passage from his evidence:—

"A diver should not dive without a second diver on the surface. I am most positive about this. Even at 50 feet I would still have a stand-by diver. This is a Navy rule. If a diver gets into difficulties he can always signal the surface that he is in difficulties and the second diver can go to his assistance."

It was submitted by counsel for the defendant company that the Royal Navy was over-cautious in prescribing the rules relating to the necessity of a second diver. On this question it is to be observed that the International Salvage Association (Malaya) Ltd., a commercial concern which has been carrying out salvage operations in local waters since 1952, has always employed a minimum of two divers as a safety measure. Mr. Wong Wing Cheung, who described himself as an executive director of this company, gave the following evidence on this point:—

"My company has been carrying out salvage operations in local waters since 1952. So far we have never attempted any salvage operations with less than two divers. We always have a minimum of two divers as a safety measure. It is a rule or regulation laid down by my company. My company is a purely civilian company, not attached to the Services."

I accepted the evidence of Mr. Wong Wing Cheung as being the truth and I also accepted the evidence of Mr. McCracken as an expert witness.